

APR 18 2022

FILED
U.S. DISTRICT COURT
DISTRICT OF NEBRASKA

U.S. FORM A To be used by a prisoner filing a complaint under the Civil Rights Act, 42 U.S.C. § 1983

2022 APR 18 PM 2:53
OFFICE OF THE CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

Kirk D. Robinson

8:22cv151

(Enter above the full name of
the plaintiff or plaintiffs
in this action.)

v.

COMPLAINT

State of Nebraska

Omaha Correction Center Medical Clinic

Nebraska Department of Corrections

UCM Russell Van Lengen

UM Kevin Klippert

Unit Admin. Kurt Wees

(Enter above the full name of
the defendant or defendants
in this action, if known.)

(Note: If there is more than one plaintiff, a separate sheet
should be attached giving the information in Parts I, II, and III
for each plaintiff, by name. Remember, all plaintiffs must sign
the complaint.)

I. A. Place of Present Confinement Omaha Correction Center

B. Parties to this civil action:

Please give your commitment name and any other name(s)
you have used while incarcerated.

(1) Plaintiff Kirk D. Robinson Registr. No. 210550Address P.O. Box 11099Omaha, NE 68111

Additional plaintiff's Registr. No. and address:

(2) Defendant UCM Vanlenger, Un. Klipper, Unit Admin Wees
State of Nebraska
is employed as Staff at Omaha Correction Center

Additional defendant's employment:

II. Previous Civil Actions

A. Have you begun other lawsuits in state or federal court dealing with the same facts involved in this action?

Yes No X(1) Title: (Plaintiff) (v.) (Defendant)

(2) Date filed _____

(3) Court where filed _____
(specify if the court was state or federal and
the level of the court)

(4) Court number and citation _____

(5) Name of judge to whom the case was assigned _____

(6) Basic claim made _____

(7) Date of disposition _____

(8) Disposition _____
(pending) (on appeal) (resolved)

(9) If decided by the court, state whether for plaintiff or defendant _____

(10) Approximate date of filing _____

(11) Approximate date of judgment _____

For additional cases, provide the above information in the same format on a separate page.

B. Have you begun other cases in state or federal courts relating to the conditions of your treatment while in confinement? Yes X No _____

III. Grievance Procedure

A. Does your institution have an administrative or grievance procedure? Yes X No _____

B. Did you present the facts relating to your complaint through the administrative or grievance procedure? Yes X No _____

C. What was the result? The response to the step 2 form was to not respond due to legal action.

D. If you did not file a grievance, state the reasons _____

E. Please attach any responses as exhibits to this complaint.

F. If there is not prisoner grievance procedure at your institution, did you complain to prison authorities? Yes _____ No _____

G. If your answer to F is yes,

A. What steps did you take and what was the result? _____

IV. Jurisdiction

A. Is this complaint brought for a violation of your federal constitutional rights by a person employed by the state, county, or municipal government or acting with such government officials? Yes X No _____

If "yes," please state the agency the official(s) is/are employed by or why you believe the defendant(s) was/were acting in conjunction with government

officials: State of Nebraska - Department of Corrections

- B. Is this complaint brought for a violation of state or local law? Yes X No _____

If so, please specify (without alleging any supporting facts) the state law(s) you believe was/were violated _____

Is/are the defendant(s) residents of the same state as you? Yes X No _____

If not, specify what state _____

V. Statement of Claim:

(State here as briefly as possible the FACTS of your case. You must state exactly what each defendant personally did, or failed to do, that resulted in harm to you, and describe the harm. Include the names of other persons involved (for example, other inmates), dates, and places of all events. If you allege related claims, number and set forth each claim in a separate paragraph. Attach an extra sheet, if necessary. Unrelated claims should be raised in a separate civil action. Do not give legal arguments or cite cases or statutes except in Part B below.

- A. On November 1, 2021, I contacted, through an Inmate Interview Request, the medical facility at the Omaha Correction Center asking to be seen about conducting a sleep study for possible sleep apnea. I was not seen until December 1, 2021 for what amounted

to a 15 minute consultation so paperwork could be sent to the main office for approval. Between these dates, I contacted unit staff and the Ombudsman off asking why it was taking so long. I received a letter of response from the ombudsman's representative in January of 2022. During this time, I let the the unit staff, in particular, UCM Van Lengen and UM Klippert know both verbally and through documentation that inmates I was living with were becoming agitated with me, that tensions were mounting. I requested several times to be moved to be separated from these individuals. (See continued statement of claim)

B. State briefly your legal theory or cite appropriate authority: I, the plaintiff, have a college degree in a medical related field. I have worked in hospitals and clinics and know how proper medical care should be provided. The defendants have a duty to provide a ^{an} safe environment to keep me safe and to provide proper medical care. They failed to do so.

VI. Relief

A. Do you request money damages? Yes No _____

If so,

1. Did you lose any money from this incident?
Yes _____ No If so, how much? _____
2. Did you receive a physical injury? Yes No _____
3. What other harm did you experience from this incident? I am experiencing extreme anxiety, depression, and other mental health issues such as fear of crowds,

Continued Statement of Claim

I had heard threatening statements, insults, and even had items thrown at me while I was sleeping. At approximately the beginning of February or end of January, Aaron Gaynes threw an object at me while I was sleeping. That morning, I wrote an emergency grievance about the incident and asking to be moved to a different unit. UCM Vanlengen told me verbally that he did not consider it life threatening and that it was not an emergency. I never did receive any copy or written response to that grievance. All UCM Klippert and UCM Vanlengen advised me to do was tell my cellmates, "Welcome to prison."

On February 10, 2022, that facility locked down to do the 1100 count just before lunch. I was watching TV and fell asleep. I remember starting to wake up because I heard someone yelling. When I looked at the person yelling at me, it was my cellmate Nate Sandness. I don't remember what exactly I said but it was something about what he was yelling at me about. He then proceeded to run toward saying he was tired of my snoring and then attacked me. I received a black eye and a cut under my eye that bled profusely. Unit case worker Mines was on duty that day and luckily was looking through the door as this incident unfolded. He immediately came into the

cell and removed first Nate Sandness and then myself and called for an ERT at which time we were taken up front, I went to the medical clinic to have my wounds checked and Mr. Sandness was taken, I believe, to the Lieutenant office. Pictures were taken of my physical injuries and UCM Mines filed a misconduct report about the incident. Mr. Sandness received punishment for his actions and all charges against me were dropped.

On February 23, 2022, I received what I perceived as a threatening statement made about my well being by Aaron Goynes. I filed an emergency grievance. This time UCM Vanlengen had me come to the unit manager's office at 0600 on February 24, 2022. Both he and UCM Hensley were present. UCM Vanlengen proceeded to try and force me to go to protective custody. I did not request protective custody, I had requested to be moved to another unit. His comments such as "Which facility do I prefer, TSCI or LCC?" and "let me know when you want protective custody, I'll be happy to sign the transfer paperwork for you!", led me to believe that if I was put into protective custody I would be transferred to another facility. Again, I did not request protective custody, just move me from the situation I'm in.

I had decided at that point, the unit staff was not going to be of any help. I started to try communicating directly with Unit Administrator Kurt Wees. My first two IIR's went unanswered because they were not returned. The third request was answered with I would need to be patient due to the facility being at capacity and the need to find a compatible cell. I waited approximately 2 weeks before sending a fourth IIR asking how much longer I would need to wait. It was unanswered by not being returned. I waited approximately 2 more weeks before sending a fifth IIR that was returned with the response that I could be put on an intra-unit waiting list and due to my sentence structure, unit J-2 would likely be where I was placed. I had enough. On approximately April, 7, 2022 I turned in a grievance of a sensitive nature. On April 11, 2022 I was finally moved to J-2.

I have been to see mental health about issues I am having that have arisen because of the attack on me and due to the fact that I have not had an uninterrupted night of sleep for at least 6 months. I am trying to see an actual psychiatrist through the institutions telepsyche method but have been waiting several weeks now. All I am told is it is scheduled.

From November 1, 2021 to March 3, 2022, the date I finally received an A-PAP machine to help with my snoring or Obstructive Sleep Apnea. It was almost 5 weeks from when I first requested to be seen to when I was finally seen by the medical provider on December 1, 2021. Approximately 2 weeks later, I was informed that I had been approved for the test on sleep study. In January of 2022, I received a response from the representative of the Ombudsman's office that the Omaha Correction Center has only one device on hand to conduct a sleep study test. I finally was able to do the test towards the end of January, 2022, approximately 6 weeks after I was informed of the approval. The medical clinic received the results on either February 9, 10, or 11, 2022. I found this out 2 weeks later when UCM Vanlengen responded to my emergency grievance on February 24, 2022. I immediately sent an IIR demanding to be seen and to resolve this situation immediately before I was assaulted again. I finally received the A-PAP breathing machine on March 3, 2022 after having gotten the results on approximately February 26, 2022.

I continued to request to be moved because my cell mates, particularly Aaron Goynes and Mike McNary, did not seem to understand that I needed time to get used the machine. After several verbal,

written, and grievance requests, I was finally transferred to another unit.

I am making the following claims:

1- The medical staff of the clinic at the Omaha Correction Center failed in providing timely care that led to the assault by another inmate on me. It took almost 5 weeks to be seen initially for what amounted to a 15 minute consult. It was another 7-8 weeks before the sleep study was conducted. It took another 3-4 weeks before I was informed of the results and then another 1-2 weeks before I finally received the A-PAP breathing machine. I allege that if the medical staff would have done their job, I would not have been assaulted and would have received the A-PAP several weeks sooner.

2- The unit staff of the Omaha Correction Center were negligent by not moving me to another unit as I requested several times. Their only defense is that I signed a refusal to have protective custody, which I did not ask for and did not want. I was essentially forced to sign the refusal if I wanted to avoid being transferred to another facility.

3- I claim that the State of Nebraska has created by a dangerous situation by letting

prison system become overcrowded to the point that an inmate cannot be moved out of a situation because there is not a place for them to go. It is also dangerous for the fact that dangerous people are being housed with general population. Nate Sandness has served multiple sentences in prison and has a history of violence against other inmates. The Omaha Correction Center is at 190+% of its design capacity. The State of Nebraska has had several years, even decades, to fix this issue and has failed to do so. The State of Nebraska continuously delays ~~to~~ any attempt to fix the problem by waiting until the next year, the next legislative session, the next politician, etc... Nebraska has failed to keep or create a safe environment for the prison population and the staff of the correction department.

trauma, pain and suffering

4. State the amount of damages claimed Please see added page.

B. Do you request a jury trial? Yes No _____

C. State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.

I want the state court to hold the state accountable for what they have done. I want the court to recognize that I suffered physical and mental injuries. I want the court to award me all damages I am claiming. I want the court to recognize that I was more than patient and made every effort to do things the correct way.

VII. Request for Appointment of Counsel

A. Do you want an attorney to represent you in presenting your claim to the court? Yes No _____

B. Did someone help you in preparing this complaint?
Yes _____ No If so, state the person's name (optional)

C. Have you made any efforts to contact a private lawyer to determine if he or she would represent you in this action? Yes _____ No

If so, state the name(s) and address(es) of each lawyer contacted I don't really have the ability to contact a lawyer

If not, state your reasons

I do not really have the ability to contact attorneys.

(Note: This court has no funds with which to pay an attorney for handling this type of case. Because of this, appointments are made only in cases where an attorney is greatly needed and the

Relief claim

I have not been able to speak with a psychiatrist about the mental health issues I am having because of this entire incident. I will ask for monetary damages in the amount of 2.5 million dollars but reserve the right to increase based on any diagnosis from a mental health expert.

attorney is willing to take the case without expecting to receive any fee.)

I declare under penalty of perjury that the forgoing is true and correct.

signed this 13th day of April, 2022.

Mark D. Nolivizi

(Signature(s) of Plaintiff(s))

3B

SA 118C
Robinson, Kirk #210550
OCC

NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES

GRIEVANCE FORM

Step Two

Central Office Appeal

RESPONSE AND REASONS FOR DECISION REACHED

Inmate Name: Robinson, Kirk

Inmate Number: #210550

Date Received: 3-25-2022

Grievance Number: 2022-1316

Subject: medical/staff

NDCS will not be providing a response to this grievance as you state you are preparing litigation. You are encouraged to communicate any medical concerns with facility medical staff.

3-2022
DATE

Harold Derr
DIRECTOR'S DESIGNEE

nf

NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES
GRIEVANCE FORM
Step Two *7022-1316*
CENTRAL OFFICE APPEAL

INSTRUCTIONS:
 TYPE OR USE BALL POINT PEN. IF MORE SPACE IS
 NEEDED, USE ATTACHMENT SHEET IN TRIPPLICATE.

From: Robinson, Kirk D. *7022-1316* 210560 OCC J306DL
 LAST NAME, FIRST, MIDDLE INITIAL NO./GROUP INSTITUTION

***Part A – REASON FOR APPEAL:**

On February 10, 2022, I was assaulted by another inmate. Several factors led to this, none of which were my fault. Unit staff behavior and lack of help, medical's inability to complete the process in a timely manner, the overcrowding of the prison system, etc..., all led to an unsafe situation that to the attack on me that resulted in physical, emotional, and mental injuries. I have a lot of documentation to support this claim and I am preparing to file suit against the state, department, facility, and staff for this situation. There is basically little to nothing that can be done or will be done by you to fix this, other than wait for my lawsuit.

3/24/22

DATE

Walt Martin

SIGNATURE

*THE COMPLETED INSTITUTIONAL GRIEVANCE FORM, INCLUDING THE CHIEF EXECUTIVE OFFICER'S/SUPERINTENDENT'S RESPONSE, MUST ACCOMPANY THIS APPEAL.

Part B – RESPONSE AND REASONS FOR DECISION REACHED

37022

DATE

Walt Martin

DIRECTOR

ORIGINAL: TO BE RETURNED TO INMATE/STUDENT AFTER COMPLETION.

NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES

GRIEVANCE FORM**Step One**
CHIEF EXECUTIVE OFFICER

INSTRUCTIONS:
TYPE OR USE BALL POINT PEN. IF MORE SPACE IS
NEEDED, USE ATTACHMENT SHEET IN TRIPPLICATE.

From: Robinson, Kirk D.
LAST NAME, FIRST, MIDDLE INITIAL

210550
NO.

J3B6DL
OCC J3B6DL
FACILITY/HOUSING UNIT

Part A – INMATE REQUEST/CONCERN:
 So medical had my test results the day before I was assaulted and I still didn't find out until the response to my grievance. That's good to know what occurred on February 23 & 24, 2022 does not negate the fact that I was viciously assaulted on February 10, 2022, an act that UCM Van Lengen does not address in his response. I will never deal with UCM Van Lengen ever again. His behavior on the morning ^{of Feb 24, 2022} was spiteful, a little vengeful, and downright unprofessional especially when he ended the conversation with "let me know when you want protective custody, I'll be happy to sign the transfer paperwork for you." UCM Hensley was witness to it. I never requested protective custody, I said the other inmate is displaying threatening behavior and he and I need to be separated. Kirk D. Robinson

3/6/2022
DATE

SIGNATURE OF REQUESTOR

Part B – RESPONSE AND REASONS FOR DECISION REACHED

You raise three issues in your grievance: first, when medical notified you of your test results; second, that you were assaulted; third, UCM Van Lengen's behavior. Under Title 68 Nebraska Administrative Code – Nebraska Department of Correctional Services Rules and Regulations, Section 006, Subsection 006.03 an inmate may address only one issue on a formal grievance. Therefore, your grievance is being returned to you unanswered.

3/21/22
DATE

E. T. Falkner
CHIEF EXECUTIVE OFFICER

ORIGINAL: TO BE RETURNED TO INMATE AFTER COMPLETION.

Emergency Grievance Form 04/22 1316

**NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES
INFORMAL GRIEVANCE RESOLUTION FORM
UNIT STAFF**

FROM: Robinson, Kirk D.
Last Name, First, Middle Initial

210550
Number

OCC/J3B60L
Facility/Housing Unit

PART A: Inmate Request/Concern.

I have been going On November 1, 2021, I started the process of getting testing for sleep apnea. It is now 4 months later and I have still not gotten any resolution. On February 10, 2022 I was physically assaulted by another inmate over the snoring situation. Now another inmate is pressuring me over it. I am going to file suit because medical has taken an inappropriate amount of time to resolve this, unit staff has done nothing to help me, the department of corrections is negligent in assuring my safety, and the state of Nebraska is responsible for creating an overcrowded prison system and taking no steps to correct the situation. I will be seeking monetary compensation for the stress, pain and suffering, and any possible mental health issues that have arisen because of this.

2/23/2022
Date

Kirk D. Robinson
Signature

PART B: Response and Reason(s) for Decision Reached.

Mr. Robinson, you state in your grievance that you were threatened on 2/23/2022, due to your snoring. When interviewed by UCM Van Lengen and UCM Hensley you stated that you felt "threatened" by Inmate Goynes and when asked why, you stated that Inmate Goynes observed you looking in his locker, and that this occurred at 1000 on 2/23/2022. You waited to submit a "Emergency Grievance" in the institutional mail to inform staff of your fear, instead of notifying staff immediately. You were in UCM Van Lengen's Office at 1200 on 2/23/2022 and did not mention anything of a threat. UCM Van Lengen and UCM Hensley offered you Protective Custody due to your fear, which you "REFUSED" and signed an Inmate Refusal of Protective Custody. You are reminded that if you feel threatened at any time, notify staff immediately," DO NOT "use a grievance, or an IIR that may be delayed in getting a response. Furthermore, Medical informed UCM Van Lengen that you had a Sleep Apnea Test completed and completed for a second time on 2/4/2022. Medical received the results on 2/9/2022 and have forwarded to your provider.

2/24/2022 0730
Date

P. Van Lengen UCM
Signature

NOTE: A copy of this completed Informal Grievance Resolution Form must accompany any Step 1 Institutional Grievance Form.

Robinson, Kirk #210550
OCC

NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES

GRIEVANCE FORM

J2D 07L

Step Two

Central Office Appeal

RESPONSE AND REASONS FOR DECISION REACHED

Inmate Name: Robinson, Kirk

Inmate Number: #210550

Date Received: 4-7-2022

Grievance Number: 2022-2476

Subject: filed as sensitive nature

You have not demonstrated how this is of a sensitive nature that cannot be addressed through the regular grievance process. As such this grievance is being returned unanswered. Cell assignments are determined consistent with policy and procedure at the discretion of designated facility staff. If you have concerns regarding your safety, you are encouraged to communicate specific and accurate information to your Unit staff.

Informal grievance #2021-9087 indicates you saw the provider on December 1, 2021. Informal grievance #2022-132 indicates you have seen the dentist on January 11, 2022. Step Two grievance #2022-1316 indicates you have been tested twice for sleep apnea and the latest results were forwarded to the provider on February 11, 2022. Step One grievance# 2022-1316 indicates you voiced safety concerns regarding your cellmate and were offered protective custody which you refused. An IIR to UA Wees regarding your wish to move from your current unit/cell was answered March 9, 2022, indicating your requested move was in the process of being accommodated however available space / suitable placement would take time.

DATE

04/08/2022

DIRECTOR'S DESIGNEE

nf
[Signature]

NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES

GRIEVANCE FORM

Step Two
CENTRAL OFFICE APPEAL

777-2476

INSTRUCTIONS:
TYPE OR USE BALL POINT PEN. IF MORE SPACE IS
NEEDED, USE ATTACHMENT
SHEET IN TRIPPLICATE.

From: Robinson Kirk R
 LAST NAME, FIRST, MIDDLE INITIAL

210550
 NO./GROUP

OCC
 INSTITUTION

*Part A – REASON FOR APPEAL:

I arrived at the Omaha Correction Center on September 1, 2021, since that time I have not had one single night of uninterrupted sleep. I have endured verbal and physical abuse. The overcrowded conditions are causing dangerous living conditions. I have not received the same level of medical care as I would have gotten if I were not incarcerated. I have verbally asked to be moved to a different unit, I have written TIR's to please be moved to a different unit and have received different answers and reasons why each time I have had enough. This entire situation has gone from indifference to outright negligence. To be clear, I am grieving the living conditions that I am in.

4/6/22
 DATE

John Kirk
 SIGNATURE

*THE COMPLETED INSTITUTIONAL GRIEVANCE FORM, INCLUDING THE CHIEF EXECUTIVE OFFICER'S/SUPERINTENDENT'S RESPONSE, MUST ACCOMPANY THIS APPEAL.

Part B – RESPONSE AND REASONS FOR DECISION REACHED

04/08/2022
 DATE

Brent Madens
 DIRECTOR

ORIGINAL: TO BE RETURNED TO INMATE/STUDENT AFTER COMPLETION.

NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES
INSTITUTIONAL CHECKDATE 4/13/22 FAC. OCC H.U. J2D7LPAYABLE TO 8th U.S. District Court \$ 350.00ADDRESS 111 South 18th Place, Suite 1152, Omaha, NE 68102three hundred fifty dollars ~~tree~~ DOLLARSI.D. # 210550 Kirk Robinson Inmate (Print Name)FOR Filing fee Kirk Robinson Inmate Signature

Relationship for Support _____

TRUST CK. # _____

WITNESSED ColemanAPPROVED Coleman

DCS-A-acc-010 (REV. 2-97)

FAC. OCC H.U. J2D7LDATE 4/13/22 \$ 350.00TO 8th U.S. District CourtKirk Robinson
Inmate NameID # 210550 Date Posted _____Witnessed ColemanApproved Coleman

Trust Ck. # _____

RETURN Stub with check for processing.

Inmate Name RICK ROBBINS
Inmate Number 210550
Box 26600 11099
Omaha, NE 68102-2600 Omaha, NE 68101
Notice: This correspondence was mailed from the
Nebraska State Penitentiary, Omaha Correction Center
Its contents are uncensored.



Legal Paperwork

NOTICE

This correspondence was mailed by an inmate
in an institution operated by the
Nebraska Department of Corrections Services
Its contents are uncensored.

8TH U.S. District Court
Roman L. Hruska Federal Courthouse
111 South 18th Plaza
Suite 1152
Omaha, NE 68102

RECEIVED
APR 18 2022
CLERK
U.S. DISTRICT COURT